90-1708

Supreme Court, U.S.
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No. 90-____

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1990

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BENTON MUSSLEWHITE,
*Petitioner,*

v.

THE STATE BAR OF TEXAS,
*Respondent.*

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**Petition for a Writ of Certiorari to the Fourteenth Court of Appeals of the State of Texas**

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## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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## APPENDIX A

Affirmed and Opinion filed February 8, 1990.

[STATE SEAL]

IN THE
FOURTEENTH COURT OF APPEALS

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No. B14-89-00041-CV

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BENTON MUSSLEWHITE,
*Appellant*

v.

THE STATE BAR OF TEXAS,
*Appellee*

---

On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause Nos. 86-44452 and 87-24402

---

## OPINION

Benton Musslewhite appeals from a judgment revoking his probation and suspending him from the practice of law for three years. In twenty-three points of error he claims the court erred in finding he had violated a disciplinary rule and in finding he had taken on a new client during the year in which he was prohibited from doing so. Musslewhite also asserts certain procedural errors. We affirm.

On November 10, 1987, the trial court called the original disciplinary actions against Musslewhite to trial. The parties announced to the court that they agreed to withdraw the original disciplinary actions, they waived trial by jury, and they agreed to a settlement. The trial court signed an agreed judgment on January 29, 1988. The judgment required that Musslewhite be suspended from the practice of law for ninety days beginning November 1, 1988. The court further suspended Musslewhite from the practice of law for three years. The court suspended the three year suspension and placed Musslewhite on probation for three years beginning January 31, 1989. Under the terms of the probation Musslewhite was prohibited, among other things, from committing professional misconduct as defined by the State Bar Rules and from accepting new employment until November 1, 1988. The court permitted Musslewhite to refer potential clients to other attorneys. The court further ordered that, "should Respondent violate any of the . . . terms or conditions of probation, the Court may revoke such probation and impose a suspension from the practice of law for a period not to exceed three years[.]"

In September, 1988, the State Bar filed a motion to revoke Musslewhite's probation on two grounds. First, he improperly solicited victims of the Piper Alpha tragedy in Scotland. Second, Musslewhite accepted new employment during the period of time he was prohibited from doing so.

*The Piper Alpha Allegations*

An off-shore oil platform, known as the Piper Alpha, exploded in the North Sea on July 6, 1988. Beginning at approximately 10:30 that morning, Musslewhite began making telephone calls to Scottish solicitors to discuss a potential lawsuit. On July 15, 1988, Musslewhite made arrangements to go to Scotland to obtain cases arising out of the Piper Alpha tragedy. Before going to Scotland, Musslewhite talked with John O'Quinn about referring to

O'Quinn any cases he obtained in Scotland. Musslewhite also spoke with Kelly Newman to obtain his assistance in working on the Piper Alpha cases. Musslewhite gave Newman a list of solicitors and asked him to go to Scotland and telephone them.

When Newman arrived in Scotland he began to telephone the Scottish solicitors. When talking with the solicitors, Newman identified himself as working with "some of the best trial lawyers in Houston" who were investigating the Piper Alpha tragedy. He told them he was talking to solicitors about possible referral of cases for filing in the United States. He told them Musslewhite would be there in a few days to talk with them in person. Newman did not tell the solicitors that Musslewhite was prohibited from accepting new clients until November 1, 1988, or that he would be suspended from practicing law between November 1, 1988, and January 30, 1989.

When Musslewhite arrived in Scotland, two days later, he and Newman hired a public relations consultant named John MacDonald. MacDonald prepared a press release that day and issued it for Musslewhite. The press release referred to Musslewhite as the team's lead counsel, and stated that the team would be working with Scottish solicitors. The release described the unnamed members of the team as "internationally-renowned."

After the press release was issued, Musslewhite left for London while Newman stayed behind. Newman sent a letter addressed to "all victims or families of victims of the Occidental Petroleum Platform disaster." That letter said that Newman was acting on behalf of a "group of internationally renowned trial lawyers in the United States," and stated:

> The purpose of this letter is to ask that if you have already retained a solicitor to let us know who that solicitor is so we can discuss the suit that we are

> bringing in the United States with him. If you have not retained a solicitor then we would advise that you do so as a matter of urgency and ask him to contact us so that we can discuss the action in the United States.

MacDonald, the public relations consultant, prepared the letter and prepared a newspaper advertisement for Musselwhite's group. Musselwhite knew about both communications and discussed them over the telephone with Newman. The advertisement MacDonald prepared stated that the team was willing to talk to "victims, families of victims, and their solicitors."

In its motion to revoke probation the State Bar claims that, by issuing the press release, the letters, and the advertisement, Musselwhite violated DR 2-101 [1] because certain statements in those communications were false and misleading. DR 2-101 provides:

> (A) A lawyer shall not make, on behalf of himself, his partner, associate, or any other lawyer, any false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:
>
> (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
>
> (2) Contains a statement of opinion as to the quality of legal services;
>
> (3) Contains a representation or implication regarding the quality of legal services

[1] DR 2-101 was repealed effective November 1, 1989. The substance of the rule has now been codified in the SUPREME COURT OF TEXAS, RULES GOVERNING THE STATE BAR OF TEXAS article 19, section 9 (Rules of Professional Conduct) Rule 7.01 (1989). We will apply the rules in effect at the time probation was revoked.

which is not susceptible to reasonable verification by the public;

(4) Contains predictions of future success;

(5) Contains statistical data which is not susceptible to reasonable verification by the public;

(6) Contains other information based on past performance which is not susceptible to reasonable verification by the public;

(7) Contains a testimonial about or endorsement of a lawyer;

(8) Is intended or is likely to create an unjustified expectation about results the lawyer can achieve.

SUPREME COURT OF TEXAS, RULES GOVERNING THE STATE BAR OF TEXAS art. 10, § 9 (Code of Professional Responsibility) DR 2-101 (1988).

The trial court found the press release, letters, and advertisement were false and misleading because they failed to identify the lawyers, because no team existed, because the communications suggested that Musslewhite already had Piper Alpha clients, because they did not disclose that Musslewhite could not take any cases, because Musslewhite predicted high recoveries in Texas courts, and because the advertisement did not contain a disclaimer stating that Musslewhite was not certified by the Texas Board of Legal Specialization.

In point of error one, Musslewhite contends the press release, letters, and advertisement were directed to solicitors, not the public; therefore, he did not violate DR 2-101. Musslewhite's contention is simply not true. The letters were mailed to the victims of the Piper Alpha tragedy and were addressed to "All Victims or Families of Victims of the Occidental Petroleum Platform Dis-

aster." Further, the advertisement stated, "[W]e respectfully suggest it is in your interest to have your solicitor call us immediately or that *you call us immediately* and give us the name, address and phone number of your solicitor or the solicitor you propose to employ." Clearly, the press release, letters, and advertisement were directed to the victims of the tragedy, not their solicitors. Point of error one is overruled.

In points of error two and three Musslewhite claims DR 2-101 is unconstitutionally vague. A regulation that "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). The Fourteenth Amendment's Due Process Clause insists that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972). This requirement applies with particular force in review of laws dealing with speech. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620, 96 S.Ct. 1755, 1760, 48 L.Ed.2d 243 (1976). These guarantees apply fully to attorney disciplinary proceedings. *In re Ruffalo*, 390 U.S. 544, 550, 88 S.Ct. 1222, 1225, 20 L.Ed.2d 117 (1968).

Appellant claims that DR 2-101 is unconstitutionally vague because it does not advise the attorney that he may be prevented from advertising to other lawyers in other countries. We do not find that DR 2-101 is unconstitutionally vague. It does not forbid conduct in terms that are so vague that people of common intelligence must guess at its meaning. The rule does not regulate communication with other lawyers. Contrary to appellant's contentions, he was not disciplined for communications with other lawyers, he was disciplined for false com-

munications to victims of the Piper Alpha tragedy. That activity is clearly prohibited by DR 2-101.

Moreover, the supreme court adopted DR 2-101 and the other State Bar rules as advertising guidelines to remove the uncertainty and confusion surrounding attorney advertising, solicitation, and trade names in the aftermath of *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). We presume the court intended that DR 2-101 comply with the restraints constitutionally permitted to prevent false, deceptive, or misleading advertising. Accepting the supreme court's inherent power to adopt the rule, it is not our function as an intermediate appellate court to nullify or alter it, for once the court decides on a rule of law, the decision is, in the absence of a controlling decision by the United States Supreme Court, binding on lower courts until the court changes the rule. *Swilley v. McCain*, 374 S.W.2d 871, 875 (Tex. 1964).

In points of error four through nine and eleven Musslewhite claims the evidence was insufficient to support findings that the press release, letters, and advertisement were false and misleading. He also claims that Newman acted alone in publishing the advertisement and mailing the letters. Musslewhite's insufficiency of the evidence points require this court to exercise our fact jurisdiction, and in so doing, we will apply the traditional test and consider all of the evidence to determine whether the verdict is clearly unjust.

First, Musslewhite claims the evidence does not show that the press release, letters, and advertisement were false and misleading. With regard to the press release, the recitation that a "team of internationally renowned U.S. Lawyers based in Houston, Texas" is misleading because it fails to identify any of the lawyers. Further, Musslewhite admitted that anyone reading the press release would not know who the team was. The release also states that the team "would be working with United

Kingdom solicitors to represent the victims or families of victims involved in the Piper Alpha tragedy." That statement is false and misleading because it suggests that Musslewhite, or the team, already had Piper Alpha clients, when they did not. The release refers to Musslewhite as the "team's lead counsel." That is misleading because the release does not disclose that the agreed judgment prevented Musslewhite from accepting new employment by clients and that he would be suspended for ninety days in the future. Finally, DR 2-101 requires a lawyer who publishes, advertises, or broadcasts with regard to any area of law to include a disclaimer stating that he is not certified by the Texas Board of Legal Specialization. The press release fails to include such a disclaimer.

The letter sent to the victims of the Piper Alpha tragedy also refers to a "group of internationally renowned trial lawyers in the United States" and is misleading because it does not identify the lawyers. Further, the statement that the team is "currently having discussions with a number of United Kingdom solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false and misleading because it suggests that the "team" already had Piper Alpha clients when it actually did not.

The advertisement that was published in the local Aberdeen paper contains similar misrepresentations. Again, the reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disaster in the United States of America and Europe" is misleading because it never identifies the lawyers and is not susceptible to reasonable verification by the public. The advertisement similarly does not contain a disclaimer. We find sufficient evidence that the press release, letters, and advertisement contained false and misleading statements.

Musslewhite also contends that Newman acted alone when in Scotland and, specifically, with regard to the

running of the advertisement and the mailing of the letters to the victims. The evidence shows, however, that Musslewhite telephoned Newman and asked that Newman work with him on the project. Musslewhite provided Newman with a list of solicitors and potential clients to telephone once he arrived. Musslewhite admitted that Newman discussed the advertisement with him over the telephone and that Newman showed him the letter before it was mailed. Newman testified that MacDonald drafted the advertisement based on information provided by Newman and Musslewhite. We find the evidence sufficient to show that Newman was working with Musslewhite when he published the advertisement and mailed the letters. Points four through nine and eleven are overruled.

In point of error ten Musslewhite claims he was entitled to have the allegations concerning the Piper Alpha matter processed through the grievance committee. To the contrary, the agreed judgment states that

> it is further ordered that should Respondent violate any of the . . . terms or conditions of probation, the Court may revoke such probation and impose a suspension from the practice of law for a period not to exceed three (3) years[.]
>
> Either Petitioners, or the Office of General Counsel of the State Bar of Texas, shall file a written motion to revoke with the Court briefly describing the acts and conduct that gave rise to the claimed violation of probation[.]
>
> * * * *
>
> The Court shall decide without the aid of a jury whether Respondent violated any of the terms or conditions of probation[.]

The judgment to which Musslewhite agreed clearly provides that the court may act on the motion to revoke probation without referring the matter to a grievance committee first. Point of error ten is overruled.

*The Agent Orange Case*

Ronald Lee Hartman and his wife, Katherine H. Hartman, employed Musslewhite in April, 1988, to pursue claims resulting from Mr. Hartman's possible exposure to Agent Orange. Mrs. Hartman executed a power of attorney on behalf of Mr. Hartman and herself employing the Law Offices of Benton Musslewhite, Inc. Musslewhite filed the lawsuit on behalf of the Hartmans' on June 22, 1988. Musslewhite signed the petition and signed, by permission, the names Wayne Mansulla and Todd Ensign.

Musslewhite discussed associating Mansulla before suit was filed and orally agreed that Mansulla would assume the lead counsel. Later, after the custodian filed a motion to conduct an oral hearing on violations of Musslewhite's probation, the Hartmans signed a power of attorney with Mansulla. Mansulla subsequently decided to withdraw from the Agent Orange litigation. Musslewhite remained lead counsel in the Hartman case at the time the court's judgment revoking probation was signed. Musslewhite informed the Hartmans that he would be able to try the case, unless trial fell within his ninety-day suspension. The agreed judgment specifically prohibited Musslewhite from accepting new employment by clients until November 1, 1988.

In point of error twelve Musslewhite claims the Hartmans were not new clients so he did not violate the prohibition on accepting new clients. Musslewhite claims that, because the Agent Orange plaintiffs had already been certified as a class, the Hartmans were his constructive clients before they hired him in April, 1988. We disagree. The evidence clearly shows that Mrs. Hartman signed a power of attorney in April, 1988, which was during the period of time Musslewhite was prohibited from accepting new clients. Point of error twelve is overruled.

In points of error thirteen and eighteen Musslewhite claims that, to recover a referral fee, which the judgment allows, he had to be employed by the Hartmans. Musslewhite asserts that, after the Hartmans signed the power of attorney, he referred them to Mansulla. Musslewhite's averments are simply not true. In June, 1988, he filed an original petition for the Hartmans. At that point Musslewhite was the attorney to whom the court would look to be responsible for the trial of the case. He did not immediately refer the Hartmans to Mansulla nor did he accept employment simply to collect his referral fee. Further, the intent of the agreed judgment was to prohibit Musslewhite from accepting new employment, not to facilitate his recovery of referral fees. Points thirteen and eighteen are overruled.

In points fourteen, fifteen, and seventeen Musslewhite claims the clause preventing him from accepting new employment is unconstitutionally vague, in fatal conflict with DR 2-107,[2] imposes punishment not allowed by article 10, section 23(A) of the State Bar Rules, and violates DR 2-108.[3]

First, the vagueness doctrine applies to a *regulation* that "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Constr. Co.*, 269 U.S. at 391. The doctrine does not apply to a judgment on a disciplinary action to which Musslewhite agreed.

Musslewhite next complains that the referral clause in the agreed judgment conflicts with DR 2-107. Musslewhite claims that, to require referral by an attorney without being employed as an attorney, conflicts with DR 2-107. DR 2-107 provides:

> A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or as-

---

[2] Now State Bar Rule 1.04.

[3] Now State Bar Rule 5.06.

> sociate of his law firm or law office, unless: (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

By that language, appellant attempts to show that he must be employed to refer a case. That simply is not what DR 2-107 means. DR 2-107 proscribes the division of attorney's fees with a nonpartner or nonassociate except under stated circumstances. The policy behind the rule is that persons represented by lawyers should be able to choose who finally represents them and the type of legal fees to be charged. *Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 461 (Tex. App.—Texarkana 1981, writ ref'd n.r.e.). The rule does not provide that, to collect a referral fee, the referring attorney must be employed by the client. The agreed judgment does not conflict with DR 2-107.

Appellant further claims the agreed judgment fatally conflicts with DR 2-108(B), which precludes a lawyer from entering into a settlement agreement that restricts the right to practice law. DR 2-108 states, "In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law." A clear reading of section B reveals that the supreme court intended the prohibition on settlement agreements to apply to settlements on a client's behalf, not settlements of disciplinary proceedings. We do not find that DR 2-108(B) was meant to apply to an agreed judgment in a disciplinary action. The agreed judgment does not conflict with DR 2-108(B). Points fourteen, fifteen, and seventeen are overruled.

In point of error nineteen Musslewhite claims the State Bar was estopped from asserting that he improperly accepted employment from the Hartmans because the custodian appointed by the court advised Musslewhite that he had "no problem" with the manner in which Musslewhite referred the case. Musslewhite testified that he

talked to the court's custodian, Hartley Hampton, and stated that the Hartmans had hired him and that he planned to refer them to Mansulla. Musslewhite testified that Hampton replied, "[N]o problem, just cover your bases." Musslewhite bases his estoppel argument on that statement. We overrule Musslewhite's point of error because Musslewhite's representation that he planned to refer the case was false. Musslewhite did not immediately refer the Hartman case; therefore, Hampton's statement cannot be the basis for estoppel. Point nineteen is overruled.

In point of error twenty Musslewhite claims the evidence is insufficient to support a finding that he accepted employment. We find the evidence that the Hartmans signed a power of attorney with Musslewhite in April, 1988, and that Musslewhite filed suit for the Hartmans in June, 1988, sufficient evidence to show that he accepted new employment during the time he was prohibited from doing so. Point or error twenty is overruled.

*Procedural Complaints*

In point of error twenty-one Musslewhite claims he was denied procedural due process because he received the State Bar's motion to revoke probation only five days before the motion was heard. Although the motion to revoke was filed only five days before trial, the custodian filed a motion to conduct an oral hearing on July 19, 1988. The motion to conduct an oral hearing put appellant on notice of the charges he had to answer to the satisfaction of the trial court. The notice and opportunity to respond afforded appellant were sufficient to satisfy the demands of due process. Further, Musslewhite waived any error with regard to notice because the trial judge allowed him a thirty-day continuance to which he agreed. Point of error twenty-one is overruled.

In point of error twenty-two Musslewhite claims the trial court erred in not superseding the suspension while

his appeal is pending. The State Bar Rules provide that a court cannot supersede judgment of suspension:

> Either party to disciplinary action shall have the right of appeal to the Court of Appeals but, if the judgment appealed from be one suspending or disbarring the respondent, he or she shall not be entitled to practice law in any form while the appeal is pending and shall have no right to supersede the judgment by bond or otherwise.

SUPREME COURT OF TEXAS, RULES GOVERNING THE STATE BAR OF TEXAS art. 10, § 24 (1989). *See also Wilson v. State*, 582 S.W.2d 484 (Tex. Civ. App.—Beaumont 1979, no writ). The trial court acted correctly in refusing Musslewhite's request that his suspension be superseded pending appeal. Point of error twenty-two is overruled.

In points of error sixteen and twenty-three Musslewhite claims that a three year suspension is excessive punishment. In a disciplinary proceeding, the punishment affixed is a matter for the exercise of the sound discretion of the trial court. *Daves v. State Bar of Texas*, 691 S.W. 2d 784, 790 (Tex. App.—Amarillo, 1985, writ ref'd n.r.e.). To determine the appropriate measure of discipline, the trial court may conduct a separate evidentiary hearing and shall consider, in addition to any other relevant matters:

> [T]he nature and degree of misconduct for which the respondent is being disciplined, the seriousness and circumstances attending the misconduct, assurance that those who seek legal services will be insulated from unprofessional conduct, the profit to the attorney or the injury or hardship to others resulting from the misconduct, avoidance of repetition, the deterrent effect upon others, the maintenance of respect for the honor and dignity of the legal profession, and the conduct of the respondent during the course of the investigation and trial of the dis-

> ciplinary action. In addition thereto, the disciplinary record of the respondent is admissible on the issue of the appropriate measure of discipline to be imposed.

SUPREME COURT OF TEXAS, RULES GOVERNING THE STATE BAR OF TEXAS art. 10, § 23(B) (1989). Although the trial court held no separate hearing, we have reviewed the evidence and conclude that the trial court properly considered these and all the other relevant factors in imposing the three year suspension. Moreover, Musslewhite agreed to the three year suspension when he signed the agreed judgment. He cannot now complain of the punishment to which he agreed. Points of error sixteen and twenty-three are overruled.

The trial court's judgment is affirmed.

/s/ Sam Robertson
Justice

Judgment rendered and Opinion filed February 8, 1990.

Panel consists of Justices Pressler, Robertson and Sears.

Publish. TEX. R. APP. P. 90

## APPENDIX B

[STATE SEAL]

SOLOMON CASSEB, JR.
SENIOR DISTRICT JUDGE

127 East Travis Street
San Antonio, Texas 76205

Area Code 512
223-4381

October 19, 1988

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Mr. Hartley Hampton
Attorney at Law
1301 McKinney, Suite 3400
Houston, Texas 77010

Re: Cause Number 86-44452
State Bar of Texas vs. Benton Musslewhite,
270th District Court, Harris County, Texas

Gentlemen:

The Motion to revoke the probation of Benton Musslewhite filed by the State Bar of Texas, was heard by the Court. The Court permitted all testimony, exhibits and arguments by all concerned. Thereafter, the Court, after reviewing the evidence and the authorities, is of the opinion and so rules that the Motion is granted. However,

Mr. Musslewhite shall be permitted to participate in the District Court Trial of the Reese case in Travis County.

Mr. Benton Musslewhite is hereby suspended from the practice of law for 3 years, beginning December 1, 1988.

Sincerely,

/s/ Solomon Casseb, Jr.
SOLOMON CASSEB, JR.
Judge Presiding

SCJr/am

CC: Mr. Ray Hardy
District Clerk
Civil Courts Building
301 Fannin Street
Houston, Texas 77002

**APPENDIX C**

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
270TH JUDICIAL DISTRICT

---

No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS

VS.

BENTON MUSSLEWHITE

---

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

---

No. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS

VS.

BENTON MUSSLEWHITE

---

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, after due consideration, makes the following Findings of Fact, which are in accordance with the undisputed or preponderance of the evidence and the following Conclusions of Law which are in accordance with the law of this State. They are:

1. That the Piper Alpha explosion occurred on July 6, 1988. Beginning at approximately 10:30 that morning, Benton Musslewhite began making telephone calls to Scottish solicitors to discuss the matter.

2. That Mr. Musslewhite went to Scotland on July 15, 1988. It was at his own instance; he was not invited and all of the contacts leading up to the trip were initiated by him.

3. That none of the contacts with Scottish solicitors between July 6 and July 13, 1988 concerning the Piper Alpha matter were initiated by the solicitors.

4. That Musslewhite did not inform any of the Scottish solicitors he called that there had been any limitation at all placed on his ability to practice law. He did not tell them that he was unable to accept new clients or that he would have to serve a ninety-day suspension that was scheduled to commence on November 1, 1988.

5. That in preparation for his trip to Scotland, Musslewhite discussed the Piper Alpha matter with John O'Quinn and Kelly Newman, both Houston attorneys.

6. That the first conversation with John O'Quinn occurred on or about July 11, 1988, and it resulted in an agreement that Musslewhite would refer to O'Quinn any cases that he obtained in Scotland. Musslewhite knew that he was barred from accepting new clients.

7. That one motive of Musslewhite's trip to Scotland was to obtain cases arising out of the Piper Alpha tragedy.

8. That during this time period, O'Quinn loaned Musslewhite money. O'Quinn had been loaning him money to pay his office overhead for sometime, in exchange for Musslewhite's agreement to refer cases to O'Quinn.

9. That Musslewhite and O'Quinn did not reach any agreement concerning the amount of referral fee that Musslewhite would be paid for any Piper Alpha case he procured. However, a written referral agreement providing for a 30-70 percent sliding scale fee division, had been in place between Musslewhite and O'Quinn for several years.

10. That after talking to O'Quinn, Musslewhite called Kelly Newman on or about July 10, 1988, and told him that he (Musslewhite) might be involved in the Piper Alpha case and wanted to know if Newman would be available to work on the case.

11. That Newman agreed to go to Scotland, with the understanding that Musslewhite was hiring him to help obtain and work on Piper Alpha cases. Newman believed that the primary purpose of the trip was to answer inquiries that might lead to employment in Piper Alpha cases.

12. That Newman and Musslewhite agreed that they would each bear their own expenses, and Newman understood he would receive some percentage of any fees realized from the Piper Alpha matter. Newman knew that Musslewhite could not pay him on a per diem basis. However, Musslewhite told Newman that if he were patient, the solicitors would ask Musslewhite and him to help them with the cases, and Newman would be "part of the team."

13. That Newman borrowed the money to finance his trip to Scotland from O'Quinn.

14. That Newman arrived in Scotland on July 13, 1988 and Musslewhite arrived on July 15, 1988.

15. That when Newman arrived in Scotland, on July 13, 1988, he stayed in the Imperial Hotel. Musslewhite had given him a list of solicitors to call and he started going down the list, making telephone calls.

16. That when Newman telephoned one of the solicitors, he identified himself as working with "some of the best trial lawyers in Houston" who were "investigating" the Piper Alpha incident. He told them he was talking to solicitors about possible referral of cases for filing in the United States. He told them Musslewhite would be there in a couple days to talk to them in person, and

gave the solicitors the impression that he and Musslewhite were acting in concert.

17. That Newman did not tell the solicitors he called that Musslewhite was the subject of a disciplinary order which prohibited him from accepting new clients until November 1, 1988, or that Musslewhite was suspended from practicing law between November 1, 1988 and February 28, 1989. However, Newman knew generally about the disciplinary order, and understood that it included those provisions.

18. That when Musslewhite arrived in Scotland on July 15, 1988 he and Newman decided that they needed to hire a public relations man. They jointly perused the telephone directory and selected P.R. Consultants, and specifically John MacDonald. MacDonald was hired on July 15, 1988. That same day, he prepared a press release issued on behalf of Benton Musslewhite, Inc. MacDonald suggested that a news conference be conducted, and he gathered between five and ten reporters at the Imperial Hotel.

19. That Musslewhite saw a rough draft of the press release and made one or two textual changes. He saw the final draft as he, Newman and MacDonald were walking into the press conference. He knew that a press release was going to be handed out and did not try to stop it.

20. That the press release referred to Benton Musslewhite as "The Team's Lead Counsel," and stated categorically that the team "would be working" with Scottish solicitors. It referred to Musslewhite's extensive experience in mass disaster litigation and described the team as "internationally-renowned." However, the group's members were not identified by name. The press release contains statements of opinion concerning Texas law and concludes "my team will not accept any cases except through Scottish or U.K.-based solicitors".

21. That at the ensuing press conference, nothing was said by Musslewhite or anyone else about the probationary order governing his law practice. Musslewhite did not disclose that he was prohibited from accepting new clients until November 8, 1988 nor did he mention the ninety-day suspension.

22. That on the same date, July 15, 1988, a letter was sent to "Solicitors of the United Kingdom who may be employed to represent victims or families of victims in the recent explosion on the Occidental Petroleum platform." This letter was written by Musslewhite.

23. That the letter contains extensive discussions of and opinions concerning Texas law governing punitive damages and forum non conveniens. It attempts to allay any concerns the local bar might have by emphasizing that neither Musslewhite nor "anyone else in my group of attorneys" will accept any cases except through solicitors. While it does not identify "team members" by name, it states that one member "has obtained the highest verdict ever for one family in a wrongful death case ($108 million dollars)" and thus, identifies O'Quinn.

24. That the letter makes no mention of Mr. Musslewhite's probation, his ninety-day suspension nor the prohibition against his accepting employment in new cases.

25. That interviews with Musslewhite appeared on "Up Front", "North Tonight", "Reporting Scotland", "Aberdeen Report" and the "Six O'Clock News" on July 15, 1988. These are Scottish radio and television programs.

26. That on "Up Front", Musslewhite gave opinions about the availability of a Texas forum and the fact that punitive damages in the amount of four times actual damages would be recoverable in a Texas forum. In "North Tonight" Musslewhite gave opinions about the value of the various cases, saying that a Million Pounds would be "far less than what I think we can recover in the American courts. . . ." On "Reporting Scotland", Musslewhite

said "we are here to assist if we can *any victim* or solicitor making a decision about whether they will file suit in the United States." (Emphasis added).

27. That on "Aberdeen Reports," he said that his "preliminary investigation" showed that punitive damages were in order in the Piper Alpha matter. This "preliminary investigation" consisted only of talking to some solicitors and reading about the Piper Alpha incident in the paper. In some of the same programs, he was quoted as saying that his team would work on a contingent fee basis, a practice that may not be legal under Scottish law. Kelly Newman discussed the fairness of the American contingent fee system in a separate interview on the "Six O'Clock News".

27. That Musslewhite did not mention the disciplinary judgment of this Court, the prohibition on his accepting employment or the ninety-day suspension in any of the broadcast interviews.

28. That by Saturday, July 16, 1988, the Scottish Press had learned of Musslewhite's disciplinary problems, and Scottish reporters began calling Houston to learn the terms of this Court's judgment. Articles ran in the Scottish papers beginning on Sunday morning, July 17, 1988, indicating that Musslewhite was in trouble with the Texas bar. By this time, Musslewhite had left Scotland for London and Portugal.

29. That prior to reports of this Court's disciplinary Judgment appearing in the Scottish Press, Musslewhite never told any of the solicitors with whom he spoke that he was limited in any way in his ability to practice law. He did not tell them about this Court's prohibtion against his entering into new attorney-client relationships nor the eminent ninety-day suspension.

30. That Musslewhite knew that he could not accept employment and that it would be misleading to lead anybody to believe that he could. Nevertheless, neither he nor

Newman disclosed this fact until it had been publicized by the Scottish press.

31. That on Saturday, July 16, 1988, Musslewhite left for London and did not return to Scotland; Newman stayed behind.

32. That while in London, Musslewhite called O'Quinn's office and discussed the fact that another law firm had sent a copy of the disciplinary judgment to Scotland and furnished it to several reporters. O'Quinn asked Mike O'Brien, formerly Judge of the 125th District of Harris County, Texas, to go to Scotland, and Musslewhite talked to O'Brien by telephone on or about July 19, 1988. Musslewhite wanted O'Brien to "reassure" the solicitors that Musslewhite's problems with the Texas bar would not affect the handling of the Piper Alpha cases since O'Quinn actually would be handling them, despite Musslewhite's status as "team leader."

33. That O'Brien is in private practice and he offices with O'Quinn, but he is neither a partner of, nor associated with O'Quinn. O'Brien left Houston on or about July 20, 1988, the Wednesday following the Aberdeen press conference. O'Quinn sometimes asks O'Brien to investigate sensitive situations, and he was concerned about newspaper articles describing Musslewhite's actions in Scotland. One such article ran in the Houston Chronicle on July 22, 1988, in which O'Quinn was quoted as saying that he has nothing to do with Musslewhite. "I'm not involved with it," he said.

34. That on or about July 18, 1988, O'Quinn told O'Brien, "I don't have time to go down there; I'm concerned what is being done in my name and not in my name and what my current situation is with the State Bar, and I'd like you to go over."

35. That about two days later, Musslewhite called O'Quinn while O'Brien was in O'Quinn's office and talked to them both on a speakerphone. Musslewhite "briefed"

O'Brien on the situation in Scotland. Musslewhite told O'Brien "there's been some adverse publicity, but I still think, you know, things can be resolved." Musslewhite was optimistic, despite the press reports of his disciplinary problems, that some cases could be "obtained."

36. That O'Brien arrived in Scotland on Thursday, July 21, 1988. He had dinner with Newman, and fortuitously met a solicitor named Frank McAteer in the hotel restaurant. They then retired to a pub next door.

37. That the following day O'Brien went shopping, sightseeing, and read the Scottish press clippings. He met with MacDonald and viewed a videotape of the press conference which he found to be "well-done". He called O'Quinn and reported that, in his opinion, things had "turned into one big mess. And given everything that's going on back over in the States with you, you want no part of this business, period."

38. That O'Quinn told O'Brien that Musslewhite would probably be calling him about going to Glasgow to visit some union solicitors. O'Quinn told him, "If he asks you to go, it is okay to go." Musslewhite called and O'Brien and Newman made the six-hour round trip train ride to Glasgow, where they met with Brian Fitzpatrick, James Stewart and Laura Walker for 30-45 minutes. Newman had already written to these solicitors and had sent them "brochures" from O'Quinn and Musslewhite.

39. That Newman and O'Brien agreed they told the solicitors that Musslewhite would probably associate O'Quinn in any Piper Alpha cases so that if Musslewhite lost his law license, O'Quinn could still handle them. O'Brien recounted his experience as a trial judge and discussed certain aspects of Texas law.

40. That after Musslewhite left Scotland for London and Portugal, Newman stayed behind and he sent a letter dated July 18, 1988 addressed to "all victims or families of victims of the Occidental Petroleum Platform disaster."

This letter said that Newman was acting on behalf of a "group of internationally renowned trial lawyers in the United States," and stated:

> The purpose of this letter is to ask that if you have already retained a solicitor to let us know who that solicitor is so we can discuss the suit that we are bringing in the United States with him. If you have not retained a soliictor then we would advise that you do so as a matter of urgency and ask him to contact us so that we can discuss the action in the United States.

41. That MacDonald, the public relations man, had obtained a list of all of the victims, and this list was used to send the July 18, 1988 letter on behalf of the "team." MacDonald wrote the initial draft of this letter, and Musslewhite discussed the matter via telephone with Newman. Newman made the decision to send the letter, proofread and signed it. The letter was mailed to all victims and their families.

42. That MacDonald prepared a newspaper advertisement for Musslewhite's group. Musslewhite knew that it was gong to be run because that was the reason MacDonald was hired. The advertisement says that the "team" is wiliing to talk to victims, families of victims and their solicitors. . ." This advertisement was published on or about July 18, 1988.

43. That Houston attorney Gwynne Old referred the Hartman case to Mr. Musslewhite who told Old that Old would receive a referral fee. The Hartmans signed a Power of Attorney employing Musslewhite in April, 1988, but the day was blank.

44. That the petition, filed in Jefferson County on June 22, 1988, was signed by Musslewhite in a mannner that designates Musslewhite as lead counsel under T.R.C.P. 8.

45. That the petition filed on behalf of the Hartmans also asks that a class be certified, including all other Vietnam veterans injured by Agent Orange but not affected by the class action settlement. Musslewhite signed, "by permission", the names "Wayne Mansulla" of Ashcraft and Geral, and "Todd Ensign" of Citizen Soldier. A press conference was held the next day in Washington, D.C. to attract other potential class members.

46. That Musslewhite had discussed associating Mansulla before suit was filed, and an oral referral agreement had been reached whereby Mansulla would assume the lead-counsel role. The referral agreement was subsequently memorialized by a letter dated June 28, 1988.

47. That on August 2, 1988, the Hartmans signed another Power of Attorney identical to the earlier contract, except that Munsulla's name was substituted.

48. That Mansulla's firm subsequently decided to withdraw from the Agent Orange litigation. Musslewhite remained as lead counsel in the Hartman case at the time this Court's Judgment was signed. He told the client from very early in their relationship that he would associate other counsel, because of the size and complexity of the case primarily. But he also told the client he would be able to try the case, unless trial fell within his ninety-day suspension.

## CONCLUSIONS OF LAW

1. Musslewhite has committed "professional misconduct" because his conduct in Scotland violates DR2-101, "Publicity and Advertising."

2. Musslewhite has violated DR2-101(A) by the following acts or omissions:

> a. By making false and misleading communications which contained material misrepresentations of law or fact in his news release, his press conference and

his en masse letter to the solicitors of the United Kingdom.

b. By making several statements that constituted statements of opinion and representations concerning the quality of legal services, such statements being not susceptible to reasonable vertification by the public,

c. By making predictions of future success and which were intended or likely to create an unjustified expectation about the results Musslewhite could achieve.

d. Musslewhite violated DR2-101(B) by repeatedly advertising, in the news release, press conference and en masse letter, the expertise of the American legal "team" while not identifying the team members by name.

3. Musslewhite and Kelly Newman acting in concert violated, the "Publicity and Advertising" rules.

4. In Scotland, Newman was acting in concert with Musslewhite.

5. The newspaper advertisement Newman and Musslewhite purchased violated the "Publicity and Advertising" rules by:

a. not identifying by name the "internationally-renowned team,"

b. omitting the material facts concerning Musslewhite's disciplinary judgment;

c. predicting higher recoveries including punitive damages, in Texas courts, and

d. making statements of opinion about the quality of legal services.

5. The July 18, 1988 letter Newman wrote to the victims, in concert with Musslewhite, violated the Publicity and Advertising Rules by:

a. not identifying by name the members of the "group of internationally-renowned trial lawyers,"

b. neglecting to mention the fact that one of this "internationally-renowned trial lawyers" was severely limited, by this Court's judgment, in his ability to practice law.

6. Musslewhite committed professional misconduct by failing to comply with DR 2-101(C)'s requirement concerning lack of board certification.

7. The Hartman case was "new employment" and Musslewhite violated this Court's Judgment by undertaking and accepting employment in that case.

SIGNED this 27th day of December, 1988.

/s/ Solomon Casseb, Jr.
Judge Presiding

**APPENDIX D**

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
270TH JUDICIAL DISTRICT

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No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

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IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

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No. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 20, 1988, the Court called the Motion to Revoke Probation filed by the State Bar of Texas, for hearing. Petitioners in the above-styled, numbered, and consolidated disciplinary actions are the Grievance Committees for State Bar District Nos. 4-A and 4-C, State Bar of Texas. Respondent is Benton Musslewhite. The Court heard evidence on September 20, 1988, and on October 17 and 18, 1988.

The Court, after considering the evidence, arguments of counsel, and authorities, makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. The Court called the original disciplinary actions to trial on November 10, 1987.

2. Petitioners in the original disciplinary actions were the Grievance Committees for State Bar District Nos. 4-A and 4-L, State Bar of Texas, and were represented by Steven M. Smoot, First Assistant General Counsel, State Bar of Texas, who announced ready for trial.

3. Respondent is an attorney licensed to practice law in the State of Texas and a member of the State Bar of Texas, and resides and offices in Houston, Harris County, Texas.

4. Respondent was represented by Ray Bass, who announced not ready.

5. The Court overruled Respondent's motion for continuance.

6. Respondent through this counsel then requested time to discuss potential settlement with the State Bar.

7. Chairman of the District 4-C Grievance Committee, Mark E. Lowes, then appeared.

8. Respondent, Bass, Lowes and Smoot thereafter engaged in settlement discussions.

9. The parties announced to the Court that they agreed to withdraw the original disciplinary actions from consideration by the Court, that they waived trial by jury, and that they agreed to a settlement.

10. A settlement was dictated into the record before the Court and the Court announced judgment thereon. (Court's Exhibit 1).

11. The parties submitted an agreed Judgment to the Court, which the Court signed on January 29, 1988.

12. The written Judgment of January 29, 1988 conforms with the agreement stated by the parties on November 10, 1987.

13. The portions of the judgment of January 29, 1988 relevant to the Motion to Revoke Probation are as follows:

IT IS THEREFORE ORDERED that Respondent be suspended from the practice of law for a period of ninety (90) days, beginning on November 1, 1988, and ending on January 30, 1989.

IT IS FURTHER ORDERED that the Court may upon written request of Respondent showing good cause and with the recommendation of the custodian, hereafter enter an order delaying commencement of the ninety (90) days suspension until no later than August 1, 1989.

IT IS FURTHER ORDERED that Respondent shall not practice law or represent himself to be an attorney during the ninety (90) day suspension.

IT IS ALSO ORDERED that Respondent be suspended from the practice of law for a period of three (3) years.

IT IS THEREFORE ORDERED that imposition of the three (3) year suspension shall be suspended and Respondent shall be placed on probation for a period of three (3) years commencing on February 1, 1988 and ending on February 1, 1991, under the following terms and conditions during the term of probation:

1. Respondent shall not commit professional misconduct as defined by the State Bar Rules art. X, § 7;

2. Respondent shall accept no new employment by clients until November 1, 1988, although Respondent may refer potential clients to other attorneys;

3. Respondent shall furnish on or before March 1, 1988 to the Court, counsel for Petitioner's and Hartley Hampton a full and complete list of all clients, along with their addresses and telephone numbers, as well as a full and complete list of all lawsuits in which Respondent is an attorney of

record, including cause and court numbers and a brief description of the status of each lawsuit;

4. Respondent shall furnish all open client files as requested by Hartley Hampton by March 1, 1988;

5. Respondent shall fully cooperate with Hartley Hampton in the performance of his duties hereinafter set forth; and

6. Respondent shall fully cooperate with the State Bar of Texas in furnishing all information, knowledge, and documents concerning other attorneys committing professional misconduct.

14. The terms and conditions of probation contained in the Jugdment of January 29, 1988 conform with the agreed terms and conditions of probation stated by the parites on November 10, 1987.

15. The terms and conditions of probation contained in the Judgment of January 29, 1988 are unambiguous.

16. Ronald Lee Hartman and his wife, Katherine H. Hartman, employed Respondent in April of 1988 to pursue claims resulting from Mr. Hartman's possible exposure to agent orange.

17. Mrs. Hartman executed a Power of Attorney on behalf of Mr. Hartman and herself employing the Law Offices of Benton Musslewhite, Inc. for such purpose. (Petitioner's Exhibit 4)

18. Respondent accepted new employment from the Hartman's as clients in April of 1988.

19. Gwynne Old, a Houston lawyer, referred the Hartmans to Respondent.

20. After Respondent accepted the Hartman employment, Respondent telephoned Wayne Mansulla, a Washington, D.C. lawyer, and asked him to be a lawyer in the Hartman lawsuit.

21. Respondent prepared, and filed on June 22, 1988, a Plaintiff's Original Petition in the 60th Judicial District Court of Jefferson County, Texas, under cause number B-129273, on behalf of the Hartmans. (Petitioner's Exhibit 5).

22. Respondent signed his own signature to the petition and also those of Mansulla and Todd Ensign, a New York lawyer.

23. Respondent participated in a news conference on June 23, 1988 to announce the filing of the Hartman lawsuit.

24. Respondent sent a letter to Mansulla on June 28, 1988, which was the first writing to or with Mansulla indicating that Respondent wanted Mansulla to work on the Hartman lawsuit. (Defendant's Exhibit 8).

25. The Hartmans did not execute a Power of Attorney employing Mansulla until after the Custodian and the State Bar filed their Motion to Conduct Hearing.

26. In the field of Texas plaintiffs personal injury practice, lawyers refer persons to other lawyers to handle the personal injury lawsuit and receive a portion of the ultimate attorney's fee recovered as a referral or forwarding fee.

27. Such a referring lawyer may have such person execute a contract employing the referring lawyer and then refer the person to another lawyer who handles the case.

28. Such a referring lawyer may also just refer such person to another lawyer who has such person execute a contract employing only the second lawyer who handles the case.

29. Referring lawyers receive referral fees without such persons entering a Power of Attorney or other employment contract with the referring lawyer.

30. Referring lawyers receive referral fees without performing legal services on behalf of such persons referred to other lawyers of the handling of their personal injury claims.

31. Respondent has referred persons to John O'Quinn.

32. John O'Quinn handled personal injury work either under the contract of the referring attorney or under his own contract.

33. On or about July 6, 1988, the Piper Alpha oil platform located in the North Sea off the coast of Aberdeen Scotland exploded, killing and injuring many men on the platform.

34. On or about July 8 or 9, 1988, Respondent learned of the Piper Alpha tragedy.

35. After learning of the tragedy, Respondent called a couple of Scottish solicitors that Respondent knew and discussed with them the potential of bringing suit against the American parent companies of the companies that owned or operated the Piper Alpha platform.

36. No Scottish solicitor invited or requested Respondent to come to Scotland.

37. No Scottish solicitor requested or engaged Respondent to represent any of the potential clients.

38. Respondent did not advise the Scottish solicitors he called of the terms of the Judgment of January 29, 1988.

39. Respondent called O'Quinn and asked O'Quinn whether O'Quinn would take any cases Respondent might secure out of the Piper Alpha tragedy.

40. O'Quinn told Respondent that O'Quinn would be willing to take on any such cases Respondent could get for O'Quinn.

41. O'Quinn intended to handle any such cases received from Respondent in his own law office as lead

counsel and if any attorneys fees were recovered, pay a percentage to Respondent as a referral fee.

42. Respondent asked O'Quinn about O'Quinn's opinion as to whether a Texas state court woud have jurisdiction over the parent corporations.

43. O'Quinn told Musslewhite that O'Quinn's opinion was that there was a good chance of maintaining jurisdiction of any such lawsuit in Texas state court.

44. O'Quinn also told Musslewhite that O'Quinn's opinion was that there was a good chance that any such lawsuit would not be dismissed for forum non conveniens in Texas state court.

45. Respondent also asked O'Quinn about O'Quinn's opinion as to what law a Texas state court would apply in any such lawsuit as to such issues as amount of damages and punitive damages.

46. O'Quinn told Musslewhite that O'Quinn's opinion was that determination of the choice of law in a Texas state court was not clear and that a Texas state court might apply Scottish law, which does not provide for punitive damages, or it might apply Texas law, which does.

47. Respondent determined to go to Scotland to seek Piper Alpha cases.

48. Respondent requested Kelly Newman, a Houston lawyer, to go to Scotland to assist Respondent in securing cases.

49. Kelly Newman agreed to go to Scotland to assist Respondent in securing cases.

50. Respondent and Newman intended that Newman share in any attorney's fees from any cases arising out of the Piper Alpha tragedy that were secured and sent to O'Quinn.

51. Respondent, O'Quinn and Newman were not law partners or otherwise in the same law firm.

52. O'Quinn did not tell Respondent or Newman that they could speak on behalf of O'Quinn.

53. A reason why Respondent requested Newman to go to Scotland with Respondent was because Respondent could only spend a couple of days in Scotland.

54. Newman borrowed $7,500.00 from O'Quinn to pay for Newman's expenses in travelling to Scotland.

55. Newman arrived in Scotland on July 13, 1988 and commenced calling a list of solicitors provided by Respondent to inquire as to whether they had any Piper Alpha cases.

56. Newman advised the solicitors that Respondent would be arriving in a couple of days to talk with any of them who wanted to talk to Respondent.

57. Respondent arrived in Aberdeen, Scotland on July 14, 1988.

58. Respondent and Newman employed John MacDonald, a public relations consultant, to assist them in publicizing their desire to secure Piper Alpha cases.

59. Respondent and Newman told MacDonald why they were in Scotland and what they wanted to accomplish.

60. Based on the information supplied to MacDonald by Respondent and Newman, MacDonald prepared a news release on behalf of Respondent.

61. MacDonald arranged for a news conference on July 15, 1988 for Respondent to announce why he was in Scotland.

62. Respondent reviewed and made a correction to the news release prior to the news conference.

63. Respondent proceeded to conduct a news conference with several members of the Scottish newspaper, radio and television press.

64. The news release was distributed to the press members at the news conference on July 15, 1988 with the knowledge of and at the behest of Respondent.

65. The news release is a false and misleading communication about lawyer services.

66. The news release was misleading because it failed to identify the "team of internationally renowned U.S. lawyers based in Houston, Texas."

67. The statement that the team "would be working with UK solicitors to represent the victims or families of victims involved in the Piper Alpha tragedy" is false and misleading because it suggested that Respondent or the team already had Piper Alpha clients, when in fact neither Respondent nor the alleged team ever had any Piper Alpha clients.

68. The description of Respondent as the "team's lead counsel" is false and misleading because the release does not disclose that the Judgment of January 28, 1988 prevents Respondent from accepting new employment by clients and that Respondent would be suspended for 90 days in the future.

69. The description of Respondent as the "team's lead counsel" is also false and misleading because the intentions of Respondent O'Quinn and Newman were that O'Quinn would be lead counsel, if not sole counsel.

70. The release is false and misleading because Respondent's purpose was to secure clients for O'Quinn to handle whereas the release suggested that Respondent was seeking clients for himself to handle.

71. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the release never identifies the lawyers.

72. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the release never discloses that the Judgment of January 29, 1988 prevents Respondent from accepting new employ-

ment by clients and that Respondent would be suspended for 90 days.

73. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the quote is a statement of opinion as to the quality of legal services.

74. Respondent's statement that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is not susceptible to reasonable verification.

75. Asking the lawyer making the representation or implication, to verify a representation or implication regarding the quality of legal services is not reasonable verification by the public.

76. Reasonable verification by the public of a representation or implication regarding the quality of legal services means verification from sources other than the lawyer making the representation or implication.

77. Release constitutes a publication, advertisement and or broadcast with regard to an area of law in which Respondent practices. (Petitioner's Exhibits 10 and 11).

78. The release fails to state the name of the lawyers responsible for the performance of legal services in the area of law broadcasted or to state "Not Certified by the Texas Board of Legal Specialization."

79. At the press conference, Respondent did not disclose the terms of the Judgment of January 29, 1988, and Respondent estimated a range of recovery for wrongful death cases between $1 million and $5 million in Texas state courts.

80. On July 16, 1988, the Scottish press learned of the Judgment of January 29, 1988.

81. The Scottish press thereafter contacted Respondent, verified that Respondent had previously been disciplined and reported Respondent's disciplinary problems.

82. On July 16, 1988, Respondent left Scotland for London.

83. Respondent left Newman in Scotland to continue efforts to secure Piper Alpha cases.

84. MacDonald also prepared an advertisement to be run in Scottish newspapers.

85. Newman reviewed the advertisement with Respondent before running it in newspapers.

86. The advertisement was run in the Scottish newspapers on behalf of Respondent's alleged "team." (Petitioner's Exhibit 2).

87. Respondent knew of the ad, knew it was going to be run, and permitted the running of the advertisement.

88. The advertisement is directed towards victims and families of victims, as well as Scottish solicitors who may already have cases.

89. The advertisement is false and misleading.

90. The reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe" is false and misleading because it never identifies the lawyers.

91. The reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe" is also false and misleading because it is not susceptible to reasonable verification by the public.

92. The advertisement invites people to call Newman directly if they have no solicitor.

93. Reference to "team now in Aberdeen" is false and misleading because Respondent was gone by then, O'Quinn never came to Scotland, and Newman is not an internationally renowned American lawyer experienced in han-

dling damage claims in mass disasters in the USA and Europe.

94. The advertisement constitutes a publication, advertisement or broadcast with regard to an area of law in which Respondent practices.

95. The advertisement does state who shall be responsible for the performance of the legal service in the area of law so advertised.

96. The advertisement fails to state "Not Certified by the Texas Board of Legal Specialization."

97. The running of the advertisement was another attempt by Respondent and Newman to procure cases for O'Quinn.

98. McDonald also prepared a form letter to be sent to the victims of families of victims of the Piper Alpha tragedy.

99. Newman discussed the sending out of the letter with Respondent.

100. The sending out of the letter was in continuance of the plan of Newman assisting Respondent in securing Piper Alpha cases.

101. Respondent permitted the letter to be sent to victims and families of victims of the Piper Alpha tragedy.

102. The letter was sent to the victims of the Piper Alpha tragedy on behalf of Respondent's so called "team."

103. The letter was false and misleading.

104. The reference to a "group of internationally renowned trial lawyers in the United States" is false and misleading because it never identifies the lawyers.

105. The reference to a "group of internationally renowned trial lawyers in the United States" is false and misleading because it is not susceptible to reasonable verification by the public.

106. The statement that the team is "currently having discussions with a number of UK solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false and misleading because it suggests that the team already had Piper Alpha clients.

107. The reference that the team is "currently having discussions with a number of UK solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false and misleading because it constitutes a prediction of future success.

108. The letter is false and misleading because Newman only had the right to represent Respondent, and not O'Quinn.

109. Respondent testified that he requested O'Quinn to come to Scotland to assure Scottish solicitors that Respondent's disciplinary problems would not affect O'Quinn's ability to handle any Piper Alpha cases.

110. In fact, O'Quinn asked Mike O'Brien, another Houston lawyer, to go to Scotland for the purposes of determining the effect of the adverse publicity concerning Respondent had had, and not to assure Scotish solicitors that O'Quinn could handle their cases.

111. O'Brien went to Scotland to the behest of O'Quinn to determine what was going on there regarding Respondent and O'Quinn.

112. O'Brien thereafter reported to O'Quinn that "things had turned into a big mess."

113. O'Quinn did not tell Respondent that Respondent could represent O'Quinn in Scotland.

## CONCLUSIONS OF LAW

1. The parties announced a settlement of the original disciplinary actions in open court and dictated the agreement into the record on November 10, 1987.

2. The written Judgment of January 29, 1988 conforms with the agreement announced by the parties on November 10, 1987.

3. The written Judgment of January 29, 1988 is a final judgment.

4. All of the provisions of the Judgment of January 29, 1987 [sic] are in conformity with and are authorized by the State Bar Act and the State Bar Rules.

5. All of the provisions of the Judgment of January 29, 1987 [sic] are unambiguous and require no evidence to determine their meaning.

6. The terms and conditions of probation contained in the Judgment of January 29, 1988 conform with the agreed terms and conditions of probation stated by the parties on November 10, 1987.

7. The terms and conditions of probation contained in the Judgment of January 29, 1988 are unambiguous and require no evidence to determine their meaning.

8. The no new employment/referral of potential client condition of probation means that until November 1, 1988, Respondent could not agree to represent or represent any persons or clients that he did not specifically represent prior to February 1, 1988.

9. The no new employment/referral of potential client condition permitted Respondent only to send people whom Respondent did not represent, or enter a Power of Attorney with, to another lawyer.

10. The no new client/referral of potential client condition did not permit Respondent to sign a new client up to a Power of Attorney or to work on a new client's case.

11. Whether Respondent may receive a referral or forwarding fee out of the Hartman case is not an issue in the State Bar's Motion to Revoke Probation.

12. A lawyer may receive a forwarding fee for referring a person to another lawyer without the person entering into an employment contract or Power of Attorney with the forwarding lawyer, so long as the person consents to the ultimate fee division.

13. The Hartmans employed Respondent and Respondent accepted the employment by the Hartmans, in April of 1988.

14. The Hartmans were new clients.

15. The Hartmans were not prior clients because of the *Sharkey vs. United States* lawsuit or because of the Agent Orange lawsuit.

16. Respondent's acceptance of the Hartman employment violated the terms and conditions of probation.

17. The Motion to Revoke Probation should be granted based on such violation of probation.

18. Respondent should be suspended for three (3) years for such violation.

19. Respondent's filing of the lawsuit on behalf of the Hartmans violated the terms and conditions of probation.

20. Mansulla's or Ensign's agreement to work on the Hartman case did not change the fact that Respondent still represented the Hartmans in violation of the no new clients/referral of potential clients condition.

21. The Motion to Revoke Probation should be granted based on such violation of probation.

22. Respondent should be suspended for three (3) years for such violation.

23. Respondent is responsible for the news release of July 15, 1988.

24. The news release is a false and misleading communication about lawyer services, in violation of Disciplinary Rules 2-101(A) and 1-102(A)(4).

25. The news release was misleading because it failed to identify the "team of internationally renowned U.S. lawyers based in Houston, Texas," in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

26. The statement that the team "would be working with UK solicitors to represent the victims or families of victims involved in the Piper Alpha tragedy" is false and misleading because it suggested that Respondent or the team already had Piper Alpha clients, when in fact neither Respondent nor the alleged team ever had any Piper Alpha clients, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

27. The description of Respondent as the "team's lead counsel" is false and misleading because the release does not disclose that the Judgment of January 28, 1988 prevents Respondent from accepting new employment by clients and that Respondent would be suspended for 90 days in the future, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

28. The description of Respondent as the "team's lead counsel" is also false and misleading because the intentions of Respondent O'Quinn and Newman were that O'Quinn would be lead counsel, if not sole counsel, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

29. The release is false and misleading because Respondent's purpose was to secure clients for O'Quinn to handle whereas the release suggested that Respondent was seeking clients for himself to handle, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

30. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the release never identifies the lawyers, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

31. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the release never discloses that the Judgment of January 29, 1988 prevents Respondent from accepting new employment by clients and that Respondent would be suspended for 90 days, in violation of Disciplinary Rules 2-101 (A) (1) and 1-102 (A) (4).

32. The quote that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is false and misleading because the quote is a statement of opinion as to the quality of legal services, in violation of Disciplinary Rules 2-101 (A) (1) and 1-102 (A) (4).

33. Respondent's statement that the "team of attorneys I am leading are some of the best in the world in handling mass disaster litigation" is not susceptible to reasonable verification, in violation of Disciplinary Rules 2-101 (A) (1) and 1-102 (A) (4).

34. Asking the lawyer making the representation or implication, to verify a representation or implication regarding the quality of legal services is not reasonable verification by the public.

35. Reasonable verification by the public of a representation or implication regarding the quality of legal services means verification from sources other than the lawyer making the representation or implication.

36. The release constitutes a publication, advertisement and broadcast with regard to an area of law in which Respondent practices and the failure to include the disclaimer violated Disciplinary Rule 2-101 (C) (2).

37. Respondent's estimate of the range of recovery of damages violated Disciplinary Rule 2-101 (A) (4).

38. Respondent is responsible for the actions of Kelly Newman in running the advertisement and sending the letter to the victims or the families.

39. Newman's actions in taking out the advertisement and sending out the letters was in furtherance of Respondent's plans and actions in seeking Piper Alpha clients.

40. Respondent knew of the running of the advertisement and the sending out of the letters on behalf of Respondent.

41. The advertisement is false and misleading, in violation of Disciplinary Rule 2-101(A).

42. The reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe" is false and misleading because it never identifies the lawyers, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

43. The reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe" is also false and misleading because it is not susceptible to reasonable verification by the public, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

44. Reference to "team now in Aberdeen" is false and misleading because Respondent was gone by then, O'Quinn never came to Scotland, and Newman is not an internationally renowned American lawyer experienced in handling damage claims in mass disasters in the USA and Europe, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

45. The advertisement constitutes a publication, advertisement and broadcast with regard to an area of law in which Respondent and Newman practice and the failure to include to disclaimer violated Disciplinary Rule 2-101(C)(2).

46. The letter was false and misleading, in violation of Disciplinary Rule 2-101(A)(1).

47. The reference to a "group of internationally renowned trial lawyers in the United States" is false and misleading because it never identifies the lawyers, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

48. The reference to a "group of internationally renowned trial lawyers in the United States" is false and misleading because it is not susceptible to reasonable verification by the public, in violation of Disciplinary Rule 2-101(A)(3).

49. The statement that the team is "currently having discussions with a number of UK solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false and misleading because it suggests that the team already had Piper Alpha clients, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

50. The reference that the team is "currently having discussions with a number of UK solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false and misleading because it constitutes a prediction of future success, in violation of Disciplinary Rule 1-102(A)(4).

51. The letter is false and misleading because Newman only had the right to represent Respondent, and not O'Quinn, in violation of Disciplinary Rules 2-101(A)(1) and 1-102(A)(4).

52. The Motion to Revoke Probation should be granted based on each of the foregoing violations of Disciplinary Rules.

53. Respondent should be suspended for three (3) years for each of the foregoing violations of Disciplinary Rules.

54. The Motion to Revoke Probation should be granted based on the news release.

55. Respondent should be suspended for three (3) years based on the news release.

56. The Motion to Revoke Probation should be granted based on the advertisement.

57. Respondent should be suspended for three (3) years based on the advertisement.

58. The Motion to Revoke Probation should be granted based on the letter.

59. Respondent should be suspended for three (3) years based on the letter.

60. Disciplinary Rules 2-101(A)(C) and 1-102 are constitutional.

61. The appointment of Hartley Hampton was proper.

62. All actions of Hartley Hampton have been proper and authorized by order of this Court.

63. The Judgment of January 29, 1988 does not require that an allegation of new professional misconduct as to Respondent must first go through a grievance committee and a disciplinary lawsuit before the State Bar can bring a motion to revoke probation.

64. Any bankruptcy proceeding did not stay the original disciplinary actions or this Motion to Revoke Probation.

SIGNED: December 29, 1988

/s/ Solomon Casseb, Jr.
Judge Presiding

## APPENDIX E

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

November 28, 1990

The Honorable William W. Kilgarlin
Powell, Popp & Ikard
707 West Tenth Street
Austin, TX 78701

Mr. Frank J. Douthitt
General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

Ms. Linda A. Acevedo
Assistant General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

RE: Case No. C-9754
Style: BENTON MUSSLEWHITE
v. THE STATE BAR OF TEXAS

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error, as amended, with the notation, "Writ Denied."

Motion for leave to file amended application was granted.

Sincerely,

JOHN T. ADAMS
Clerk

by /s/ Blanca Morin
BLANCA MORIN
Deputy

**APPENDIX F**

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

February 6, 1991

The Honorable William W. Kilgarlin
Powell, Popp & Ikard
707 West Tenth Street
Austin, TX 78701

Mr. Frank J. Douthitt
General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

Ms. Linda A. Acevedo
Assistant General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

RE: Case No. C-9754

Style: BENTON MUSSLEWHITE
v. THE STATE BAR OF TEXAS

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Sincerely,

JOHN T. ADAMS
Clerk

by /s/ Courtland Crocker
COURTLAND CROCKER
Deputy

## APPENDIX G

**DR 2-101. Publicity and Advertising.**

(A) A lawyer shall not make, on behalf of himself, his partner, associate, or any other lawyer, any false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Contains a statement of opinion as to the quality of legal services;

(3) Contains a representation or implication regarding the quality of legal services which is not susceptible to reasonable verification by the public;

(4) Contains predictions of future success;

(5) Contains statistical data which is not susceptible to reasonable verification by the public;

(6) Contains other information based on past performance which is not susceptible to reasonable verification by the public;

(7) Contains a testimonial about or endorsement of a lawyer;

(8) Is intended or is likely to create an unjustified expectation about results the lawyer can achieve.

(B) A lawyer who publishes, advertises, or broadcasts with regard to any area of the law in which he practices must, with respect to each area of the law so advertised, publish or broadcast the name of the lawyer, licensed to practice law in Texas, who shall be responsible for the performance of the legal service in the area of law so advertised.

(C) Each lawyer whose name is either published, advertised, or broadcast pursuant to DR 2-101(B):

(1) Who has been awarded a Certificate of Special Competence by the Texas Board of Legal Spe-

cialization in the area so advertised must state with respect to each area, "Board Certified, (area of specialization)—Texas Board of Legal Specialization."

(2) Who has not been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised must state with respect to each area, "Not certified by the Texas Board of Legal Specialization". Where the area so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area." Such statements must be displayed conspicuously so as to be easily seen or understood by any consumer.

(D) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication media in anticipation of or in return for publicity in a news item, except that the provisions of this paragraph shall not prohibit payment of the cost of lawyer advertising permitted under this rule.

(E) A lawyer who makes or causes to be made any form of written, recorded or broadcast public communication shall retain a copy of same for a period of four (4) years from the date such communication is first made or caused to be made.

* * * *

**DR 2-107. Division of Fees Among Lawyers.**

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each, or is made with a forwarding lawyer.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

## APPENDIX H

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
270TH JUDICIAL DISTRICT

---

No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

---

No. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

### JUDGMENT

On November 10, 1987, the Court called the above-styled, numbered, and consolidated disciplinary actions to trial. Petitioners, the Grievance Committees for State Bar District Nos. 4-A and 4-C, State Bar of Texas, appeared by counsel and by the District 4-C Grievance Committee Chairman, and Respondent, Benton Musslewhite, appeared in person and by counsel. Petitioners announced that they withdrew the Fifth Amended Disciplinary Petition and would proceed on the Fourth Amended Disciplinary Petition. The parties announced to the Court that

they agreed to withdraw these disciplinary actions from consideration by the Court, that they waived trial by jury, and that the Court should enter judgment as follows:

The Court finds that Respondent has committed professional misconduct as defined by the State Bar Rules art. X, § 7 and that this judgment shall encompass and dispose of all allegations of professional misconduct in the Fourth Amended Disciplinary Petition along with all other allegations of professional misconduct contained in any complaints pending with the State Bar of Texas, or of which the State Bar of Texas had knowledge prior to November 9, 1987. The Court determines that the appropriate sanctions for committing such professional misconduct is suspension from the practice of law for a period of ninety (90) days, plus suspension from the practice of law for a period of three (3) years, with suspension of imposition of the three (3) year suspension only and the placement of Respondent on probation for three (3) years.

The parties agree and the Court further finds that just cause exists to believe that the Court should appoint a member of the State Bar of Texas, pursuant to the State Bar Rules art. X, § 33.

IT IS THEREFORE ORDERED that Respondent be suspended from the practice of law for a period of ninety (90) days, beginning on November 1, 1988, and ending on January 30, 1989.

IT IS FURTHER ORDERED that the Court may upon written request of Respondent showing good cause and with the recommendation of the Custodian, hereafter enter an order delaying commencement of the ninety (90) day suspension until no later than August 1, 1989.

IT IS FURTHER ORDERED that Respondent shall not practice law or represent himself to be an attorney during the ninety (90) day suspension.

IT IS ALSO ORDERED that Respondent be suspended from the practice of law for a period of three (3) years.

IT IS FURTHER ORDERED that imposition of the three (3) year suspension shall be suspended and Respondent shall be placed on probation for a period of three (3) years commencing on February 1, 1988 and ending on February 1, 1991, under the following terms and conditions during the term of probation:

1. Respondent shall not commit professional misconduct as defined by the State Bar Rules art. X, § 7;

2. Respondent shall accept no new employment by clients until November 1, 1988, although Respondent may refer potential clients to other attorneys;

3. Respondent shall furnish on or before March 1, 1988 to the Court, counsel for Petitioners, and Hartley Hampton a full and complete list of all of his clients, along with their addresses and telephone numbers, as well as a full and complete list of all lawsuits in which Respondent is an attorney of record, including cause and court numbers and a brief description of the status of each lawsuit;

4. Respondent shall furnish all open client files as requested by Hartley Hampton by March 1, 1988;

5. Respondent shall fully cooperate with Hartley Hampton in the performance of his duties hereinafter set forth; and

6. Respondent shall fully cooperate with the State Bar of Texas in furnishing all information, knowledge, and documents concerning other attorneys committing professional misconduct.

IT IS FURTHER ORDERED that should Respondent violate any of the foregoing terms or conditions of probation, the Court may revoke such probation and impose a suspension from the practice of law for a period not to

exceed three (3) years, aside and separate from the suspension already herein ordered, under the following procedures:

1. Either Petitioners, or the Office of General Counsel of the State Bar of Texas, shall file a written motion to revoke with the Court briefly describing the acts and conduct that gave rise to the claimed violation of probation;

2. A copy of such motion shall be served on Respondent pursuant to T.R.C.P. 21a at Respondent's last address shown on the membership rolls of the State Bar of Texas;

3. The Court shall conduct an evidentiary hearing on such motion within forty-five (45) days of the date that Respondent is served with a copy of such motion, at which time the State Bar of Texas shall bear the burden of proving its allegations to the Court under the Texas Rules of Evidence by a preponderance of the evidence;

4. After the date that Respondent is served with a copy of such motion and prior to the hearing, either party may invoke the discovery provisions of the Texas Rules of Civil Procedure;

5. The Court shall decide without the aid of a jury whether Respondent violated any of the terms or conditions of probation; and

6. Should the Court decide that Respondent has committed any violation, the Court may enter an order revoking the probation and imposing suspension from the practice of law for a period of three (3) years, commencing on or after the date of revocation, and aside and separate from the suspension already herein ordered, and/or the Court may also impose additional terms or conditions of probation, or lengthen the period of probation; and

7. Respondent shall have the right to appeal any order of the Court finding that Respondent violated any terms or conditions of probation, and revoking probation or

changing the terms, conditions, or period of probation, as if the order were any other final judgment, pursuant to the Texas Rules of Appellate Procedure.

IT IS ALSO ORDERED that the Court shall employ the provisions of State Bar Rules art. X, § 33 and appoint Hartley Hampton pursuant thereto.

IT IS FURTHER ORDERED that Hartley Hampton shall do the following:

1. Examine the client matters and files, and obtain information as to any pending matters which may be necessary to comply with his duties' under State Bar Rules art. X, § 33;

2. Notify Respondent's clients of the ninety (90) day suspension thirty (30) days prior to the commencement of the ninety (90) day suspension, inform them that they may seek other counsel or remain with Respondent, secure written statements from clients who wish to change attorneys, and arrange for the surrender or delivery of the papers or property of a client who decides to obtain other counsel.

3. With consent of the client, file such motions and pleadings and do such things on behalf of the client to further the client's legal rights;

4. Furnish the Court and counsel for Petitioners a written status report on Respondent's law practice every three (3) months, beginning on May 1, 1988 and continuing thereafter until November 1, 1991;

5. Review and approve all settlements, and settlement and distribution sheets, for Respondent's clients; and

6. Approve all payment of expenses or divisions of attorney's fees in any of Respondent's clients' cases.

IT IS FURTHER ORDERED that if the Court finds upon written application of Hartley Hampton, and after notice and hearing, that Respondent obtained legal em-

ployment in violation of a Disciplinary Rule, the Court shall order that Respondent shall forfeit any legal fees he may ever be entitled to arising from the employment, provided that Respondent shall have the right to appeal any order forfeiting legal fees as if the order were any other final judgment, pursuant to the Texas Rules of Appellate Procedure.

IT IS FURTHER ORDERED that Hartley Hampton shall be compensated at a reasonable rate to be established by the Court and to be paid out of attorney's fees accruing to Respondent.

IT IS FURTHER ORDERED that Respondent and Hartley Hampton shall be subject to further order of the Court relating to Respondent's law practice, after notice and hearing.

IT IS FURTHER ORDERED that all costs of Court shall be borne by the party who incurred same and that Petitioners shall recover no attorney's fees from Respondent.

SIGNED: January 29, 1988.

/s/ Solomon Casseb, Jr.
Judge Presiding

APPROVED AND AGREED TO:

OFFICE OF GENERAL COUNSEL
STATE BAR OF TEXAS

/s/ Steven M. Smoot
By: STEVEN M. SMOOT
First Assistant General Counsel
State Bar No. 18774300
P.O. Box 12487
Austin, TX 78711
512/463-1381
Attorneys for Petitioners

/s/ Benton Musslewhite
BENTON MUSSLEWHITE
State Bar No. 14752000
609 Fannin Street, Suite 517
Houston, TX 77002
713/222-2288
Respondent

/s/ Ray Bass
RAY BASS
State Bar No. 01884000
P.O. Box 237
Austin, TX 78767
512/478-2277
Attorney for Respondent

**APPENDIX I**

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
270TH JUDICIAL DISTRICT

---

No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

---

No. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

MOTION TO REVOKE PROBATION

TO THE HONORABLE JUDGE OF SAID COURT:

Movant, the State Bar of Texas, moves the Court to revoke the probation of Respondent, Benton Musslewhite, showing the Court:

I.

DISCIPLINARY JUDGMENT

A. On November 10, 1987, the Court called these disciplinary actions to trial. Petitioners, the Grievance Committees for State Bar District Nos. 4-A and 4-C, State

Bar of Texas, appeared by counsel and by the District 4-C Grievance Committee chairman, and Respondent, Benton Musslewhite, appeared in person and by counsel. Counsel for Petitioners announced ready for trial. Counsel for Respondent announced not ready for trial. After the court overruled Respondent's Motion for Continuance along with various other dilatory motions, Respondent sought to enter into settlement negotiations. The Court permitted the parties to discuss prospective settlement. Thereafter, the parties announced to the Court that they agreed to withdraw this disciplinary action from consideration by the Court, that they waived trial by jury, and that the Court should enter judgment pursuant to the agreement of the parties.

B. The Court signed a Judgment in conformity with the agreement of the parties, on January 29, 1988, providing, in pertinent part:

> IT IS THEREFORE ORDERED that Respondent be suspended from the practice of law for a period of ninety (90) days, beginning on November 1, 1988, and ending on January 30, 1989.
>
> IT IS FURTHER ORDERED that the Court may upon written request of Respondent showing good cause and with the recommendation of the custodian, hereafter enter an order delaying commencement of the ninety (90) days suspension until no later than August 1, 1989.
>
> IT IS FURTHER ORDERED that Respondent shall not practice law or represent himself to be an attorney during the ninety (90) day suspension.
>
> IT IS ALSO ORDERED that Respondent be suspended from the practice of law for a period of three (3) years.
>
> IT IS FURTHER ORDERED that imposition of the three (3) year suspension shall be suspended and

Respondent shall be placed on probation for a period of three (3) years commencing on February 1, 1988 and ending on February 1, 1991, under the following terms and conditions during the term of probation:

1. Respondent shall not commit professional misconduct as defined by the State Bar Rules art. X, § 7;

2. Respondent shall accept no new employment by clients until November 1, 1988, although Respondent may refer potential client to other attorneys;

3. Respondent shall furnish on or before March 1, 1988 to the Court, counsel for Petitioners, and Hartley Hampton a full and complete list of all clients, along with their addresses and telephone numbers, as well as a full and complete list of all lawsuits in which Respondent is an attorney of record, including cause and court numbers and a brief description of the status of each lawsuit;

4. Respondent shall furnish all open client files as requested by Hartley Hampton by March 1, 1988;

5. Respondent shall fully cooperate with Hartley Hampton in the performance of his duties hereinafter set forth; and

6. Respondent shall fully cooperate with the State Bar of Texas in furnishing all information, knowledge, and documents concerning other attorneys committing professional misconduct.

## III.

## AGENT ORANGE SUIT

In April of 1988, Ronald L. Hartman and Katherina H. Hartman employed Respondent to pursue claims resulting from Mr. Hartman's possible exposure to agent orange. Mrs. Hartman executed Power of Attorney on

behalf of Mr. Hartman and herself employing the Law Offices of Benton Musslewhite, Inc. for such purpose. On June 22, 1988, Respondent filed a Plaintiff's Original Petition in the 60th Judicial District Court of Jefferson County, Texas, under cause number B-129273, on behalf of "Ronald L. Hartman and Katherina H. Hartman and as Next Friend of Jeffrey Alan Hartman and Angela Marie Hartman, Both Minors Individually and as Representatives of Those Similarly Situated." After the filing of the lawsuit, Respondent proceeded to conduct a news conference to announce his filing of a new so-called "Agent Orange" lawsuit. Respondent's acceptance of employment by the Hartmans and the class action claimants violated the terms of probation.

III.

PIPER ALPHA TRAGEDY

A. On July 6, 1988, the Piper Alpha oil platform located in the North Sea far off the coast from Aberdeen, Scotland, exploded, killing or injuring some 166 men. After learning of the tragedy, Respondent contacted John O'Quinn, a Houston lawyer, about whether O'Quinn would handle any of the Piper Alpha cases in Texas courts, and Respondent states that O'Quinn agreed to accept clients procured by Respondent. O'Quinn has stated that he had nothing to do with Musslewhite being in Scotland. Respondent also contacted Kelly Newman, also a Houston lawyer, about going to Scotland with Respondent to seek Piper Alpha clients, and Newman agreed to go in anticipation of securing clients and receiving a portion of any eventual attorneys' fees.

B. On July 15, 1988, Respondent and Newman called a news conference in Aberdeen, Scotland where they distributed a news release, a copy of which is attached hereto as Exhibit "1." The news release is false and misleading. The reference to a "team of internationally renowned

U.S. lawyers" is false or misleading because the release never identified these lawyers. The statement that the team "would be working with U.K. solicitors to represent victims or families of victims involved in the Piper Alpha tragedy" is false or misleading because it suggests that the team already had Piper Alpha clients. The description of Respondent as the "team's lead counsel" is false or misleading because the release never discloses that the Judgment prevents Respondent from accepting new employment by clients and that Respondent will be suspended for ninety (90) days, and because Respondent's arrangement with O'Quinn was for O'Quinn to be lead counsel. The quote that the "team of attorneys I am leading are some of the best in the world at handling mass disaster litigation" is false or misleading because the release never identifies the lawyers, the release never discloses that the Judgment prevents Respondent from accepting new employment by clients and that Respondent will be suspended for ninety (90) days, and the quote is a statement of opinion as to the quality of legal services. The release also fails to name the lawyers responsible for the performance of the legal services in the area of law broadcasted or to state "Not certified by the Texas Board of Legal Specialization."

C. Respondent and Newman thereafter took out an advertisement in the local Aberdeen newspapers, a copy of which is attached hereto as Exhibit "2." The advertisement is false and misleading. Again, the reference to a "team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe" is false or misleading because it never identifies these lawyers and is not susceptible to reasonable verification by the public. The statement that the team "are now in Aberdeen" is false or misleading because Respondent, who is not named in the advertisement, had already left Aberdeen, O'Quinn never was in Aberdeen regarding Piper Alpha, and Newman, who is the only lawyer named in the advertisement, is in no

fashion internationally renowned. The advertisement also fails to name the lawyers responsible for the performance of the legal services in the area of law advertised or to state "Not certified by the Texas Board of Legal Specialization."

D. Newman in concert with Respondent then mailed on behalf of the "team" form letters directly to the victims or their families, a copy of which is attached hereto as Exhibit "3." The letter is false and misleading. And again, the reference to a "group of internationally renowned trial lawyers in the United States" is false or misleading because it never identifies these lawyers and is not susceptible to reasonable verification by the public. The statement that the team is "currently having discussions with a number of U.K. solicitors with a view to filing suit in the state court of Texas to obtain maximum damages" is false or misleading because it suggests that the team already had Piper Alpha clients and because it is a prediction of future success. Furthermore, the Solicitors Practice Rules of 1987, a copy of which are attached hereto as Exhibit "4," which set out the ethical rules for Scottish lawyers with respect to advertising and solicitation, prohibit targeted, direct mail solicitation and would subject Respondent to discipline were he a Scottish solicitor.

Movant prays that the Court conduct an evidentiary hearing and thereafter determine whether Respondent has violated any terms of probation, and in which case enter an Order revoking probation and imposing suspension from the practice of law for three (3) years, and/or impose another additional terms, conditions, or length of probation the Court deems appropriate.

Respectfully submitted,

OFFICE OF THE GENERAL
COUNSEL
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711
512/463-1440

/s/ Steven M. Smooth
STEVEN M. SMOOT
First Assistant General
Counsel
State Bar Card No. 18774300

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Revoke Probation has been served on Benton Musslewhite by delivery of a true copy to him at 609 Fannin, Suite 517, Houston, Texas 77002, by hand delivery and by certified mail, return receipt requested, and regular mail, by depositing them in properly addressed and posted wrappers with the United States Postal Service on September 12, 1988.

/s/ Steven M. Smoot
STEVEN M. SMOOT

**APPENDIX J**

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
270TH JUDICIAL DISTRICT

---

No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

---

No. 87-244402 (Consolidated)

THE STATE BAR OF TEXAS

v.

BENTON MUSSLEWHITE

---

MOTION TO CONDUCT ORAL HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW HARTLEY HAMPTON appointed Custodian of the law practice of Benton Musslewhite by this Court on January 19, 1988 and the State Bar of Texas, and file this Motion to Conduct Oral Hearing and in support thereof would show as follows:

I.

Movants have received oral reports, and news articles have been published by the Associated Press, Reuters news services and Scottish publications, which call into question

certain activities of Benton Musslewhite. Specifically, those reports and news accounts accuse Mr. Musslewhite of soliciting the survivors of the Piper Alpha tragedy to employ him to represent them in wrongful death or other types of tort actions.

If these accounts are true, Mr. Musslewhite has violated this Court's Judgment of January 29, 1988.

II.

Additionally, Mr. Musslewhite conducted a press conference in which he announced the filing of B129273, *Hartman, et al v. Diamond Shamrock Chemicals, et al*, 60th District Court, Jefferson County, Texas. This Court's Judgment of January 29, 1988, states:

> "2. Respondent shall accept no new employment by clients until November 1, 1988, although Respondent many [sic] refer potential clients to other attorneys;"

Accordingly, Mr. Musslewhite may have violated that provision of this Court's Judgment.

Given the potential gravity of the situation, Movants would ask that this Court conduct an oral hearing and receive testimony concerning Mr. Musslewhite's activities in Scotland and the circumstances surrounding the *Hartman* case, and Movants further pray that this Court compel Mr. Musslewhite to appear at such hearing and produce certain evidence. Specifically, Movants would ask the Court to compel Mr. Musslewhite to produce the following:

1. Any and all powers of attorney obtained from any potential parties to the Piper Alpha litigation and the *Hartman* litigation;

2. Any and all fee agreements between Mr. Musslewhite and any other attorneys pertaining to the Piper Alpha litigation and the *Hartman* litigation;

3. Any and all documents, as that term is used in the Texas Rules of Civil Procedure, pertaining to any "invita-

tions" by any parties to Mr. Musslewhite, asking that Mr. Musslewhite come to Scotland to visit with any persons concerning the Piper Alpha incident;

4. Any documents pertaining in any way to the financing of Mr. Musslewhite's July, 1988 trip to Scotland;

5. Any and all documents pertaining in any way to any press conferences Mr. Musslewhite conducted or in which Mr. Musslewhite participated in Scotland pertaining to the Piper Alpha tragedy.

6. Any documents pertaining in any way to his employment in the *Hartman* case, including the circumstances under which he was contacted by the Plaintiff; and

7. Any documents pertaining in any way to his referral of the *Hartman* case to any other attorneys, including any joint venture agreements with any other attorneys.

WHEREFORE, premises considered, Movants pray that this Court enter an Order by requiring Benton Musslewhite to appear at an evidentiary hearing to testify, under oath, concerning the circumstances of the above described events, and that this Court further order Mr. Musslewhite to produce the materials herein described.

Respectfully submitted,

By: /s/ Hartley Hampton
HARTLEY HAMPTON
State Bar No. 08874400
1301 McKinney, Suite 3400
Houston, Texas 77010
(713) 224-0934

/s/ Steven M. Smoot
STEVEN M. SMOOT
First Assistant General Counsel
State Bar No. 18774300
P. O. Box 12487
Austin, Texas 78711
(512) 463-1381

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing instrument has been forwarded by certified mail, return receipt requested, to Benton Musslewhite and his counsel of record at the addresses shown below on this 19th day of July, 1988.

/s/ Hartley Hampton
HARTLEY HAMPTON

Benton Musslewhite
609 Fannin Street, Suite 517
Houston, Texas 77002

Ray Bass
P. O. Box 237
Austin, Texas 78767

## APPENDIX K

NEWS RELEASE
FOR IMMEDIATE USE

Aberdeen—15 July 1988. A team of internationally-renowned US lawyers based in Houston, Texas, revealed today that they would be working with UK solicitors to represent victims or families of victims involved in the Piper Alpha tragedy.

The team's lead counsel, Benton Musslewhite, has been extensively involved in mass disasters. These include the Ranger I disaster, Ocean Ranger sinking, Agent Orange litigation, Harris County Dumpsite cases and the Amarillo Cotton Farm disaster.

The defendants likely to be involved in Piper Alpha litigation all have their corporate headquarters in the US, with a number of these being in Texas. This is significant because the Texas state courts are open to foreign as well as domestic plaintiffs and litigation pursued through state, rather than federal, courts is usually more successful.

Until recently, there had been some law to the effect that the state courts would have to apply the federal forum non conveniens law. However, a recent case before the US Supreme court won by Mr. Musslewhite means that Texas can retain its own jurisdiction when dealing with actions raised by foreign plaintiffs.

"The jurisdictional complexities and favourable punitive damages law make Texas the best place for suit to be filed by victims or victim's families of this tragedy," commented Mr Musselwhite.

"I would stress that my team will not accept any cases except through Scottish or UK-based solicitors.

"The team of attorneys I am leading are some of the best in the world at handling mass disaster litigation and

one of our hallmarks is that we work to obtain a recovery or a settlement on a separate, individual basis.

"We will not allow any packaging of settlements in group lots. The tragic aspect of packaging settlements, which has been customary in mass tragedies handled by some other attorneys, is that the persons with the greater damages are penalised for the benefit of those with lesser damages.

"It is our belief that each client's case stands on its own footing and the value of each client's case must be separately considered and finalised. I think this is important to clients."

Ends 15 July 1988

Issued on behalf of Benton Musslewhite Inc. by John Macdonald, PR Consultants Scotland. Tel 0224 325326 (office), 0224 311448 (home).

Further information:

Kelly Newman
Tel: Aberdeen (0224) 589101.

## APPENDIX L

## PIPER ALPHA DISASTER

## DAMAGE CLAIMS

A team of internationally renowned American lawyers experienced in handling damage claims in mass disasters in the USA and Europe are now in Aberdeen and willing to talk to victims, families of victims and their solicitors in respect of claims arising from the Piper Alpha disaster.

Our team includes the attorney who handled the recent case in which the US Supreme Court established the right of foreign plaintiffs to have jurisdiction in the state courts in America determined under state law rather than federal law, and the attorney who obtained the largest verdict ever for one family in a wrongful death case (over £50 million).

We believe the best courts for pursuing claims are the state courts of Texas and Louisiana, because we believe we can retain jurisdiction over cases in these courts and that the recoveries possible will be substantially higher and we can recover punitive, as well as actual, damages in those courts. We believe the Piper Alpha disaster is one in which punitive, as well as actual, damages should be awarded.

We totally agree with the sentiments expressed by the offshore oilmen's unions that every possible step should be taken to guarantee the safety of workers' offshore. This can be achieved partly through union recognition, but also through the pursuit of punitive damage claims which will force oil multinationals to adopt stronger safety measures.

We understand that the Scottish Law Society has warned against directly employing U.S. attorneys and our team agrees with those suggestions. It is our policy not to take any cases except through Scottish or U.K. solicitors.

However, we understand that there has been a suggestion by some Scottish solicitors that only one American law firm handles all cases. We respectfully suggest that it is not in the interest of victims or their families to pool all cases into one American firm, any more than it would be good to pool all cases into one U.K. firm.

There has been a trend among some American Attorneys to package cases for settlement purposes. We do not believe this is a good practice. Packaging cases means that the better cases are penalized for the benefit of the less valuable cases. We believe it is our solemn duty to see to it that each case is settled separately on an individual basis and not packaged for settlement purposes, as so many other American firms are prone to do.

Therefore, we respectfully suggest it is in your interest to have your solicitor call us immediately or that you call us immediately and give us the name, address and phone number of your solicitor or the solicitor you propose to employ. The call should be made to Kelly Newman, Aberdeen 589101 (Room 215, Imperial Hotel, Stirling Street, Aberdeen). Please leave your name and telephone number if for any reason I am not there or my line is busy.

Kelly Newman
of Houston, Texas

**APPENDIX M**

LAW OFFICE
OF
KELLY L. NEWMAN
ATTORNEY AT LAW
350 North Belt Suite 234
Houston, Texas 77060
(713) 448-1173

July 18, 1988

*All Victims or Families of Victims of the Occidental Petroleum Platform Disaster*

I am an American attorney and I represent a group of internationally renowned trial lawyers in the United States. We are currently having discussions with a number of U.K. solicitors with a view to filing suit in the state court of Texas to obtain maximum damages for the victims and/or their families.

I know you have seen a great deal of publicity about American lawyers and that you have been advised by your own solicitor or lawyer. We agree with that advice and we will not accept any cases except through your own solicitor or lawyer.

The purpose of this letter is to ask that if you have already retained a solicitor to let us know who that solicitor is so that we can discuss the suit that we are bringing in the United States with him. If you have not retained a solicitor then we would advise that you do so as a matter of urgency and ask him to contact us so that we can discuss the action in the United States.

I will be at the Imperial Hotel, Stirling Street, Aberdeen (tel: 0224 589101) for all of this week. If for any reason you have not retained a solicitor until after I leave

Scotland, please call me at my office in Houston, Texas (tel: (713) 448 1173).

With kind regards,

/s/ Kelly Newman
KELLY NEWMAN

## APPENDIX N

Law Offices of Benton Musslewhite, Inc.
Counselors at Law
609 Fannin
Suite 517
Houston, Texas 77002
(713) 222-2288

July 15, 1988

Dear Mr. ————————

*To Solicitors of the United Kingdom Who May Be Employed to Represent Victims or Families of Victims in the Recent Explosion on the Occidental Petroleum Platform.*

The purpose of this letter is to give you some information that might be helpful to you in deciding whether or not you want to attempt to protect your client's rights in the courts of the United States. As you probably already know, there are several potential defendants which include Occidental Petroleum Corporation and its various subsidiaries. These include its UK subsidiaries; a group of companies based in Houston, Texas, Union of Texas and its subsidiaries, who were part owners of the platform; J. Ray McDermott and its subsidiaries and parent corporation, who were the designers and builders of the platform; and other potential defendants.

These defendants have their overall base of corporate operations in the United States, with the McDermott group of companies being based in New Orleans, Louisiana and the Union of Texas group of companies being based in Houston, Texas. The location of the companies involved in this tragic accident is of prime importance. Because at least one or more of the companies are based in Texas and Louisiana, suit can be brought in either one of the state courts of those states.

It is extremely important that, if litigation is going to be pursued in the United States, such litigation should be pursued in the state courts rather than in the federal

court system. This is because the federal law, with regard to jurisdictional matters, including the doctrine of forum non conveniens, is extremely bad. (See *Piper vs. Reyno*, 454 U.S. 235 (1981).)

On the other hand, both Texas and Louisiana take the approach that their state court forums are open to all foreign plaintiffs as well as to domestic plaintiffs, and it seems clear that jurisdiction can be retained in the state courts of either one of those states as long as one of the defendants is domiciled there. (With respect to Texas, see *Alfaro vs. Dow Chemical*, No. 01-87-00700-CV, (1st. Ct. of App. Tex. 1988).)

Until recently, there had been some law to the effect that the state courts would have to apply the federal forum non conveniens law but this threat was laid to rest by a case I handled before the Supreme Court of the United States. I argued the case on March 30, 1988 and the Supreme Court of the United States handed down its decision on May 16, 1988 in the case of *Chick Kam Choo vs. Exxon*. A copy of that decision is attached.

There, in that case, the Supreme Court reversed the Court of Appeals for the Fifth Circuit and held that each state court can decide the forum non conveniens issue in accordance with its own law.

Therefore, I am happy to report to you that, if you are representing victims or victim's families arising out of the tragedy on the Occidental platform, you have the option of filing suit in the state courts of Texas or Louisiana and it is my opinion that jurisdiction will definitely be retained in either one of those forums.

It is my recommendation that suit be filed in the state court of Texas, not just because I have my home office in Texas but because Louisiana does not have as favourable a punitive damages law as does Texas. The Texas law is reflected in *Burk Royalty vs. Walls* 616 S.W.2d 911 (Tex. Sup. Ct. 1981). Moreover, Texas has extremely favourable actual damages, in wrongful death cases, generally

classified as soft or "loss of society" damages (these are damages that allow much greater recoveries than just "economic" loss). This is reflected in *Sanchez vs. Schindler* 651 S.W.2d 249 (Tex. Sup. Ct. 1983). From what I already know of the facts of this case, there is a very good chance that we could prove gross negligence with regard to this tragic accident and therefore recover punitive damages under Texas Law. Since Scotland has no punitive damages law, generally speaking, there would be no reason for the Texas state court not to apply the Texas punitive damages law, under a conflict of law analysis. (See *Duncan vs. Cessna Aircraft* 665 S.W.2d 414 (Tex. Sup. Ct. 1984).) *This being the case, it is quite clear that the potential actual and punitive damages recoverable in the state courts of Texas are greater than in any other jurisdiction and, as I have stated, it seems clear to me that jurisdiction can be retained in the state courts of Texas.*

I understand that there is a strong movement to have all of the Scottish solicitors join together and hire one American law firm. *I want to make one thing clear at the outset and that is that neither I nor anyone in my group of attorneys will accept any cases except through Scottish or U.K. solicitors.* This has been my practice for the last several years and that will be our practice in this particular situation.

What we want to do is to offer the Scottish and U.K. solicitors an alternative. The group of attorneys I am working with are some of the best in the world at handling mass disaster litigation. One of the members of our group has obtained the highest verdict ever for one family in a wrongful death case ($108 million). I was one of the co-lead counsel in a case where we obtained $21.6 million for seven Greek families in a maritime case tried in Beaumont, Texas. More importantly, I can justifiably point to my expertise in the field of forum non conveniens or jurisdictional law. Some of you may recall the well-known *Castanho* case, which has established some prece-

dent here in the United Kingdom, having gone all the way up to the House of Lords. After winning the case in the United Kingdom, thus clearing the way to sue in the United States, a $3 million settlement was obtained after six days of trial in the United States. (See *Castanho vs. Jackson Marine* 650 Fed. 2d 546 (5th Circuit 1981)—a copy is attached.

The hallmark of our group will be that we consider each case separately and will work to obtain a recovery or a settlement on a separate, individual basis. We will not allow any packaging of settlements in group lots. The unfair aspect of packaging settlements, which has been customary in mass tragedies handled by some *other* attorneys, is that the persons with the greater damages are penalized for the benefit of those with lesser damages. It is our solemn belief that each client's case stands on its own footing and the value of each client's case must be separately considered and separately finalized. I think this is important to the clients.

While I know there is a strong movement toward having one American firm handle all the cases, I frankly do not think that this is in the best interests of the clients to have all their cases handled in a package.

Therefore, if you are interested in joining our efforts to obtain justice for the victims in the state courts of Texas please call me. Call the Imperial Hotel in Aberdeen and ask for either myself (I will only be here for two days) or Mr. Kelly Newman who will be here for the remainder of this week. The phone number is Aberdeen 589101. If any of you would like to meet and discuss any of these matters I would be most happy to do so.

A copy of decisions cited herein but not attached will be furnished upon request.

Yours sincerely

Benton Musslewhite

Kelly Newman
of Houston, Texas.